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10/759,679	01/19/2004	Robert G. Arsenault	PD-980208A	8613

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THE DIRECTV GROUP, INC.  
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EL SEGUNDO, CA 90245

EXAMINER
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CHIN, RICKY

ART UNIT	PAPER NUMBER
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2423

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02/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,679	<b>Applicant(s)</b> ARSENAULT ET AL.	
	<b>Examiner</b> RICKY CHIN	<b>Art Unit</b> 2423	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-22, 44-46 and 48-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-22, 44-66, and 48-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Remarks***

1. The prior art cited in the earlier continuation application 09/491,959 have been considered and reviewed.

### ***Response to Arguments***

2. Applicant's arguments filed November 5, 2008 have been considered but are not persuasive.

With regards to the double patenting rejections of claims 20 and 44, applicant argues that claims 1 and 20 of '528 does not claim the notion of receiving a plurality of time segments of the selected video program in parallel and that the segments are received on a different one of the channels. The examiner respectfully disagrees. Claims 1 and 20 of '528 recite the receiving and storing subsequent segments of the video program from each of the plurality of channels transmitting a portion of the selected video program in parallel. Thus, the double patenting rejections are maintained.

With regards to claim 20, applicant argues that Artigas, while disclosing the reception of more than one channel in parallel, teaches of the programs transmitted as being different programs, thus not reading on the claimed invention since the multiple channels in the claimed invention are used to store the same program and that the combination would result in a system in which the first n minutes of multiple media programs were transmitted on multiple channels for pre-storage. The examiner realizes that such a system may result in the combination of Ebisawa and Artigas but is not limited to only such a system.

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Accordingly, the transmitting and storing of the same program is well-known in the art as taught by Ebisawa (See fig. 3 and col. 4 lines 11-35, which discloses transmitting a program on different channels offset by a transmission interval). Furthermore, Artigas teaches of the reception of programs of more than one channel in parallel selected by the user. Hence, whether or not the program is the same of different programs is relative to what is being broadcast on the different channels and of what the user desires and selects. Therefore, it would have been obvious to have modified the teachings of transmitting and receiving the same program as taught by Ebisawa to incorporate reception of more than one channel in parallel as taught by Artigas for the mere benefit of simultaneous recording of broadcasted content on several channels by which reduces the amount of time needed to store an entire single program or of several videos for simultaneous playback.

Applicant further argues that combination of Ebisawa and Artigas teach away from one another. Applicant argues this by stating that Ebisawa requires a substantial amount of transmission bandwidth, but less storage while Artigas requires substantial storage and therefore offer different solutions to the same problem of bandwidth requirements in providing video programs to users so that they can be played back on demand. The examiner respectfully disagrees.

Ebisawa and Artigas both transmit and receive content from different channels requiring transmission bandwidth. Furthermore, the storage capability is relative to the capabilities of the user storage apparatus in which both Ebisawa and Artigas contain enough capacity to store content from a plurality of channels.

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Having more storage capacity is merely a design preference of the storing apparatus and would have been obvious for Ebisawa to incorporate having more storage capabilities as to be able to store more programming. Therefore, Artigas and Ebisawa do not offer different solutions as they both require transmission bandwidth for transmitting simultaneously and receiving content from multiple channels and storage capabilities for storing the content. Thus, because the modification of Ebisawa in view of Artigas for the benefit of providing the user with a more minimal waiting time and to be able to provide playback functions would be rendered appropriate and operable to one of ordinary skill in the art.

With regards to claims 21-22, 44-46, and 48-57, applicants arguments are analogous to that of claim 20. Thus, the rejections are maintained for the reasons set forth and stated above.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either

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is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 20 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,701,528. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 20 of the current application is merely broader than that of patented claim 1 and therefore is anticipated as an obvious variant.

Claim 44 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 20 of U.S. Patent No. 6,701,528. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 44 of the current application is merely broader than that of patented claim 20 and therefore is anticipated as an obvious variant.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 20-21, 44-45, 48 and 50-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebisawa, US 6,263,504 in view of Artigalas et al., US 6,091,883.

Regarding claim 20, Ebisawa teaches a method of storing a video program in response to a user demand (col. 6, lines 12-34), wherein the video program is repeatedly transmitted on one of a plurality of channels, each repeated transmission separated in time from a preceding transmission of the video program by a retransmission interval and being transmitted on a different channel than the previous transmission (see fig. 3 and col. 4 lines 11-35, which discloses transmitting a program on different channels offset by a transmission interval), and selecting at least one of a plurality of video programs (col. 6 lines 12-19). Furthermore, Ebisawa (col. 9 lines 30-55) also discloses that it is possible to transmit multiplexed video data of a plurality of channels by multiplexing the data from a number of data transmitting units as depicted in Fig.7 and being able to select a desired channel from among the plurality of channels on the receiving side. Ebisawa does not explicitly teach of receiving a plurality of time segments of the selected video program in parallel, wherein each of the time segments is received on a different one of the channels.

However, in the same field of endeavor, Artigalas further elaborates and exemplifies reception of one or more broadcasting channels simultaneously (col.3 lines 10-13) wherein several channels of programs are received and recorded in parallel (See col. 4 lines 10-35). Hence, since several channels of programs are received in parallel, the time segments transmitted of the NVOD

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program of Ebisawa may also be received in parallel according to Artigalas since the time segments are also merely transmitted programs on different channels.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas for the mere benefit of providing the user with a more minimal waiting time and to be able to provide playback functions.

Regarding claim 21, Ebisawa further teaches the method of claim 20, wherein the time segments of the selected video program are staggered in time by the retransmission interval (see col. 4 lines 30-35 which discloses staggering the program by 10 minutes).

Regarding claims 44 and 45, the claims have been analyzed and rejected with regards to claims 20 and 21.

Regarding claims 48 and 50, see analysis of claim 44. Furthermore, the combination further discloses of an input device for accepting a selection of at least one of a plurality of video programs for VOD service (See Ebisawa, col.5 lines 20-25 and Fig. 1, element 24 which discloses the control input which receives a command input from an input unit 41, such as a remote control); a tuner for receiving multiple segments of the selected video program in parallel, wherein each segment is received on one of the plurality of channels (See Ebisawa, col. 9 lines 30-55 which discloses a selecting unit where the desired



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channel is selected). Ebisawa, in col.9 lines 3-55 also discloses that it is possible to transmit multiplexed video data of a plurality of channels by multiplexing the data from a number of data transmitting units as depicted in Fig.7 and being able to select a desired channel from among the plurality of channels on the receiving side. Ebisawa further discloses of a storage device, for pre-storing a first segment of the selected video program (See Ebisawa, col. 6 lines 12-19, which discloses the MO disc 25 and data storage unit 22 which stores the first 10 minutes of program-1 in advance), and for storing subsequent segments of the selected video program in parallel while retrieving the pre-stored first segment of the selected video program (Ebisawa, col. 5 lines 44-49 and col. 9 lines 24-30 which discloses that the plurality of heads independently access the storage regions so the reading and writing of the data can be simultaneously carried out and that more than two heads may be used). Ebisawa does not explicitly teach of receiving a plurality of time segments of the selected video program in parallel, wherein each of the time segments is received on a different one of the channels.

However, in the same field of endeavor, Artigas discloses a tuner (Fig. 1, 1) and further elaborates and exemplifies of a means of reception of one or more broadcasting channels simultaneously (col.3 lines 10-13) wherein several channels of programs are received and recorded in parallel (See col. 4 lines 10-35). Furthermore, Artigas discloses of simultaneous recording and/or reading of several programs and where the recording can be done on two or more channels in parallel (See Artigas, col. 2 lines 65-67; col. 4 lines 3-53). Hence, since several channels of programs are received in parallel, the time segments

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transmitted of the NVOD program of Ebisawa may also be received in parallel according to Artigalas since the time segments are also merely transmitted programs on different channels. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas for the benefit of enabling the user more rapid updating of his video and greater flexibility in the restitution of recorded programs as well as of providing the user with a more minimal waiting time and to be able to provide playback functions.

Regarding claim 51, the claim has been analyzed and rejected for the same reasons set forth in claim 21.

Regarding claim 52, see analysis of claim 48. The apparatus of claim 48 would imply performing the functions of pre-storing a video program comprising of receiving and storing a first segment of a selected video program as claimed.

The combined teaching of Ebisawa and Artigalas also teaches of wherein the portions of the first segment are received and stored on the plurality of channels in parallel. Since the time of retransmission interval is not stated, the first segment can be construed as the entire temporal length of the selected video as a whole, the first segment thereby being pre-stored as the entire selected video. Thus, the portions and time segments of the first segment (the entire selected video program) is received and stored on the plurality of channels in parallel as described in the analysis of claims 20 and 44.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined the teachings of Ebisawa and Artigalas for the mere benefit of having increased flexibility with channel surfing and being able to satisfy a viewers request for a program in a more timely manner.

7. Claims 22 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebisawa, US 6,263,504 in view of Artigalas et al., US 6,091,883 as applied to claims 20 and 44 respectively and in further view of Reynolds et al., US 6,934,963.

Regarding claims 22 and 46, Ebisawa (col. 5 lines 44-47 and col. 9 lines 24-35) and Artigalas (col. 22 lines 65-67) discloses of simultaneous record and reproduction. The combination does not explicitly teach of selection of receiving the selected second video in real time while receiving the plurality of time segments of the selected at least one of a plurality of video programs in parallel. However, in the same field in endeavor, to further elaborate and exemplify the teachings of simultaneous record and reproduction as taught by Ebisawa and Artigalas, Reynolds teaches a system for simultaneous watch and record of programs from multiple channels (See col. 20 lines 40-43) which would meet the limitation of selecting and receiving a second program.

Therefore, it would have been obvious of one of ordinary skill in the art to have modified the teachings of Ebisawa and Artigalas with that of Reynolds for the benefit of the viewer being able to watch other programs that they do not

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have the option of watching in the future and to be able to watch programs while recording simultaneously.

8. Claims 49 and 53-57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebisawa, US 6,263,504 in view of Artigalas et al., US 6,091,883 and in further view of Okura et al., US 6,487,722.

Regarding claim 49, Ebisawa and Artigalas when combined teach the limitations set forth in claim 48. However, the combination as a whole fails to explicitly teaches of a memory for storing a program guide having an entry for each of the video programs or of a processor coupled to the input device and tuner, and the memory, for scanning the program guide for a VOD service indicator, and for identifying the video program associated with the VOD service indicator as the selected video program.

Okura teaches of an EPG system wherein the EPG is stored in memory (See Fig. 2, 51 which discloses an EPG data memory). The processor 44 is also coupled to the input device 61, tuner 41 and memory 50-53 for scanning a guide for a VOD service indicator and for identifying the video program associated with the VOD service indicator as the selected video program (See col. 10 lines 13-52, which discloses that the CPU judges where the EPG data includes a program flag and reads out the corresponding symbol data which is then outputted to the OSD control section).

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Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas with that of Okura for the benefit of providing viewers quickly and reliably with information that characterizes each program with a more visual convenience.

Regarding claim 53, Ebisawa and Artigalas when combined teach the limitations set forth in claim 52. However, the combined teachings as a whole do not explicitly teach of scanning a program guide having an entry for each of the video programs for a VOD service indicator and identifying a video program associated with the VOD service indicator as the selected video program. Okura teaches of an EPG system (see rejection set forth in claim 49), which discloses these features.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas with that of Okura for the benefit of providing viewers quickly and reliably with information that characterizes each program with a more visual convenience.

Regarding claim 54, Ebisawa and Artigalas when combined teach the limitations set forth in claim 52. However, the combined teachings as a whole do not explicitly teach of accepting a selection of at least one of the video programs for VOD service; and associating the VOD indicator with the entry of each video

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program selected for VOD service. Okura teaches of an EPG system (see rejection set forth in claim 49), which clearly discloses these features.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas with that of Okura for the benefit of providing viewers quickly and reliably with information that characterizes each program with a more visual convenience.

Regarding claim 55, Ebisawa and Artigalas when combined teach the limitations set forth in claim 52. However, the combined teachings as a whole do not explicitly teach of scanning a program guide having an entry for each of the video programs to identify at least one video program scheduled to be repeatedly transmitted on one of the plurality of channels.

Okura teaches of scanning a program guide that discloses this feature (See col. 11 lines 47-53, which discloses that a program flag is transmitted to display the symbol "Last" of NVOD).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas with that of Okura for the benefit of providing viewers quickly and reliably with information that characterizes each program with a more visual convenience.

Regarding claims 56-57, see claim 55. Ebisawa and Artigalas when combined teach the limitations set forth in claim 52. However, the combined teachings as a whole do not explicitly teach of the step of comparing the video program information for each of the entries wherein the video program information comprises a program title and unique identifier. Okura teaches of wherein the video program information comprises a title (See col. 10 lines 65-57, which discloses that it is judged whether titles have been rendered in all the display areas). Okura also teaches of wherein the video program information comprises a unique identifier (See col. 11 lines 24-31, which discloses several different unique identifiers).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teachings of Ebisawa and Artigalas with that of Okura for the benefit of providing viewers quickly and reliably with information that characterizes each program with a more visual convenience.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Contact**

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Chin whose telephone number is 571-270-3753. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on 571-272-7296. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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